

REMARKS

Claims 1-41 are pending in the application. Claims 18-41 have been withdrawn from consideration. New claims 42-44 have been added to the application. Therefore, claims 1-17 and 42-44 are at issue.

The examiner issued a restriction requirement, and required an election of examiner's Group I (claims 1-17) or examiner's Group II (claims 18-41). Applicants hereby affirm the election of examiner's Group I (claims 1-17), with traverse, for examination. However, it is submitted that all claims 1-41 should be examined at this time.

The inventions are not independent as required under 35 U.S.C. §121 because the methods and food products set forth in claims 18-41, and the films set forth in claims 1-17, are so closely related that a search for applicant's method and food product claims would necessarily encompass a search for applicant's claims. In fact, claims 34-39 depend directly from claims 13 and 15 of examiner's Group I.

In addition, even if the inventions are considered independent, there is no evidence that a search and examination directed to all claims 1-41 would be a *serious burden* on the examiner, as is required by M.P.E.P. §803. ("If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." and "there must be a serious burden on the examiner if restriction is not required.")

In particular, it is submitted that a complete search directed to the subject matter of the method and food product claims of examiner's Group II would require a search directed to the subject matter of the film claims of examiner's Group I, and vice versa.

Because search and examination of the entire application can be made without serious burden on the examiner, it would be wasteful of the time, effort, and resources of both the applicant and the Patent Office to prosecute the method and apparatus claims in separate applications. Search and examination of Groups I and II in a single application would be much more efficient than requiring the Patent Office and applicant to do so in separate applications. Accordingly, it is submitted that all claims should be examined at this time.

Claim 1 has been amended to clarify that the surface treatment increases the ability of the film to absorb a liquid. Support for the amendment to claim 1 can be found in the specification, for example, at page 8, line 31 to page 9, line 1; Table 2 of the Examples; page 18, line 6 through page 20, line 2; page 20, lines 13-25; and the results of the SEM studies in Example 4. New claims 42 to 44 are supported in the original claims, for example, claims 1, 9, and 11. Other claim amendments correct obvious typographical errors or improve the form of a claim.

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite because of the term "dynes." In response, applicant has amended claim

1 to recite that "the surface has a dyne level of at least 50 dynes." In view of the amendment to claim 1 and for the reasons set forth above, it is submitted that claim 1 complies with 35 U.S.C. §112, and that the rejection should be withdrawn.

Furthermore, the examiner's contention that the term "dynes" is indefinite is erroneous. In the art, the terms "dynes," "dyne/cm," and "dyne level" are used interchangeably. For example, applicants submit concurrently with this amendment, as Exhibit A, a review article by a supplier of corona discharge equipment wherein the terms are used interchangeably, for example, see pages 3, 5-7, 21-23, 27, 30, 31, and 35 for use of dyne/cm, dynes, and dyne level. Also see U.S. Patent Nos. 7,040,230 (claims 7, 9, and 20); 6,989,181 (column 2, line 22); 6,984,830; and 6,902,645 (claims 2 and 9). Support for the term dyne level can be found in the specification at page 16, line 1; Table 2 at pages 17 and 18; and page 18, line 27.

Claims 1-5, 7-15, and 17 stand rejected under 35 U.S.C. §102(b) as being anticipated by WO 97/36798 (WO '798). Claim 6 stands rejected under 35 U.S.C. §103 over WO '798. Claim 16 stands rejected under 35 U.S.C. §103 over WO '798 in view of EP 0 986 957 (EP '957). For the reasons set forth below, it is submitted that these rejections should be withdrawn.

With respect to claims 1-3, the examiner states that WO '798 discloses a film having a liquid absorbed therein, wherein the surface of the film can have a surface energy of at least 50 dynes. The examiner also states that the feature of corona treatment

and liquid application are to be given little patentable weight because the limitations are directed towards a process limitation. However, a process limitation is given little patentable weight only when a product is the same as in the prior art. In the present case, it is the surface treatment, and degree of surface treatment, that provides a patentably distinct film, structurally and chemically, from a film disclosed in WO '798. It is the surface activation set forth in claims 1-5 that provide the differences between the presently claimed films and prior films.

WO '798 discloses a film formed from a block copolymer having a substantially water-insoluble segment and a substantially hygroscopic segment. The hygroscopic segment is formed from a coreactant capable of homopolymerizing to provide a material that is substantially hygroscopic. The hygroscopic segments retain an aqueous modifier, or additive, that is transferred to a food product. The water-insoluble segment does *not* dissolve or absorb the aqueous modifier, rather its purpose is to provide structural integrity to the film such that the film remains intact upon separation from a food product. In other words, WO '798 discloses a polymer having structural segments (water insoluble) and absorbing segments (hygroscopic). The water insoluble segments preferably are polyamides.

WO '798 fails to teach or suggest any significant modification of the physical properties of the water-insoluble segment to enable this segment to absorb a liquid because such modification *decreases* the structural integrity of the segment and potentially

leads to failure of the film. In fact, WO '798 discourages modification of the physical properties of the water-insoluble segment.

WO '798 refers to using corona treatment to increase the surface energy of the food contact layer (page 13, lines 1-6). This increase in surface energy is provided solely to increase adhesion between the film and the food product, thereby reducing undesirable purge or cookout. WO '798 also teaches that the surface energy can be increased by adding a polar additive, such as a polyamide. WO '798 further teaches that when the food contact layer is PEBA (poly(ether block amide)), then corona treatment is not required. Still further, it is noted that WO '798 also *cautions against* the surface activity of a film being too high because this will lead to tearing of the product upon film removal (page 13, lines 7-8).

WO '798 absolutely fails to teach or suggest, and fails to consider or address, that a surface treatment, such as a corona treatment, can increase the ability of the film to absorb a liquid. In fact, the disclosure of WO '798 leads to a contrary conclusion. WO '798 teaches that (1) the presence of a water-soluble segment is *essential* for the film to absorb a liquid and (2) the water-insoluble segment does not absorb liquid but provides structural support. WO '798 merely suggests the possible use of a corona treatment in accordance with *conventional* corona treatments used in the industry to increase surface adhesion of polyolefin films. Such conventional use is acknowledged in the present specification. Applicant submits that a

person of skill in the art would therefore understand the reference to corona treatment to refer to the instance when the water-insoluble segment is an olefin. Still further, it is noted that exemplified films in WO '798 are not corona treated, or otherwise surface treated.

Applicant, therefore, submits that a film which has undergone *sufficient* surface activation treatment, and which in turn has an increased ability to absorb a liquid, is physically and chemically different from the segmented-film disclosed in WO '798.

To clarify this difference, claim 1 has been amended on a nonprejudicial basis to indicate that the surface treatment increases the amount of liquid that can be absorbed by the film. This feature is neither taught nor suggested by WO '798, which precludes a novelty rejection under 35 U.S.C. §102(b). Because dependent claims 2-17 each incorporate the features of claim 1, these claims also are novel over WO '798. It also is submitted that this is a nonobvious difference over WO '798, and that claims 1-17 are patentable over WO '798 under 35 U.S.C. §103.

With further respect to claims 4 and 5, for the reasons set forth above, the physical properties and surface chemistry of a film surface treated to the claimed energy levels differ from the physical properties and surface chemistry of a film treated using conventional corona treatment levels. Thus, because the claimed films are different from the films of the prior art, the power level recited in these claims, and

the surface activation treatments of claims 2 and 3 has patentable weight.

With further respect to claims 8 and 10, WO '798 teaches that the polyamide material is *not* corona treated. Thus, WO '798 does not teach each and every feature of this claim.

With respect to claim 9, applicant respectfully points out that the reference at page 11 of WO '798 refers to crosslinking of *HPC* (hydroxypropyl cellulose) to render it water insoluble. There is no disclosure in WO '798 with respect to crosslinked polyvinylpyrrolidone. Polyvinylpyrrolidone is described in WO '798 as being a useful moisture absorbing polymer to be blended with the copolymer. Applicant submits that a person of skill in the art would understand that crosslinking of polyvinylpyrrolidone would be undesirable in view of the disclosure of WO '798 because crosslinking *reduces* the moisture-absorbing capabilities of the polyvinylpyrrolidone.

With further respect to claims 14, 15, and 17, and reference to an antiviral agent, applicant respectfully submits that the claim is being construed more broadly than is permissible. During examination, claims are interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). The words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. It is submitted that to construe the term antiviral to extend to an agent which has no inherent antiviral properties, but

simply induces eating goes beyond the plain meaning of the term.

It also must be pointed out that an ingredient that "induces eating" does not preclude infection of a food product because food products, and especially those in films, are not consumed immediately after preparation, but can be stored, shipped, remain on store shelves, and in remain possession of the purchaser for a substantial time prior to the flavoring agent having an ability to "induce eating." Thus, the food product can be infected prior to an arguable inducement to eating occurs.

Claims 6, 7, and 11-13 recite preferred embodiments of the invention, and do not rely solely on the features recited in these claims for patentability, but rely upon the claimed features and *all* of the features recited in claim 1. For the reasons set forth above with respect to claim 1, it is submitted that claims 6, 7, and 11-13 also are novel and nonobvious over WO '798.

Claim 16 stands rejected as being obvious over WO '798 in view of EP '957. However, neither WO '798 nor EP '957 teach or suggest exposing a film to *sufficient* surface activation to increase the amount of liquid that the film can absorb. Therefore, claim 16 is patentable over the combination of references for the same reasons set forth above with respect to claims 1-15 and 17.

In summary, it is submitted that claims 1-17 are both novel and nonobvious over WO '798 and EP '957, alone or in combination. WO '798 merely teaches sur-

face activation of a film to avoid purge. WO '798 fails to teach or suggest a *high* level of surface activation that improves the ability of the film to absorb a liquid, i.e., to increase the amount liquid that can be absorbed by the film. In fact, WO '798 provides no teaching or suggestion that the films disclosed therein have any ability to absorb an increased amount of liquids. EP '957 fails to cover the deficiencies of WO '798 for the reasons set forth above. It is further submitted that new claims 42-44 also are patentable over WO '798, alone or in combination with EP '957 for the reasons set forth above.

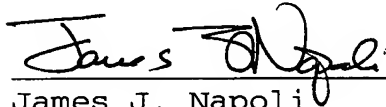
In summary, it is submitted that the claims are in a proper form and scope for allowance. It also is submitted that claims 18-41, and at least claims 35-39, should be rejoined into the application. An early and favorable action on the merits is respectfully requested.

Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

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By

A handwritten signature in dark ink, appearing to read "James J. Napoli", is written over a horizontal line.

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